IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 941 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA MUNI. CORPN.

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 941 of 1990

MR PRANAV G DESAI for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 08/09/2004

ORAL JUDGEMENT

Heard Mr.Pranav g. Desai, learned advocate on behalf of the petitioner. Though Notice of Rule has been

served, no appearance is entered by the respondent, nor anyone appears in the matter for respondent but considering the fact that it is very old matter of the year 1990, this Court is inclined to proceed with the matter even in absence of the respondent.

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#. In the present petition, the petitioner Corporation has challenged the award passed by the Industrial Tribunal, Baroda in Reference [IT] No.31 of 1984 dated 7th March, 1989. The Industrial Tribunal, Baroda has passed the order and allowed the dispute raised by the Union that now onwards post of Maintenance Supervisor in the scale of Rs.425-700/- is required to be filled up from the post of Work Mistri only on the basis of seniority.

#. Learned advocate Mr.Desai submitted that post of Work Mistri and Maintenance Supervisor both are different posts and not having channel of promotion. He submitted that from the post of Work Mistri, there is another post of Supervisor and thereafter, post of Maintenance Supervisor in the hierarchy. Therefore, there is no channel of promotion from post of Work Mistri to Maintenance Supervisor and therefore, Tribunal has committed gross error in considering the fact that there is promotion channel between the post of Work Mistri and Maintenance Supervisor. He also submitted that though the Tribunal has relied upon award passed by the Industrial Tribunal in earlier Reference [IT] No.144 of 1977 dated 25th February, 1983, wherein upto scale of Rs.550-900/-, all the posts in question are required to be filled up by Corporation on the basis of seniority only. Therefore, Mr.Desai submitted that posts can be filled up by the Corporation on the basis of promotion provided that there is channel of promotion between two posts, otherwise, cannot.

#. In view of above submissions made by Mr.Desai, in my opinion, it is pertinent to refer directions issued by the Tribunal in Reference [IT] No.144 of 1977 dated 25th February, 1983 which suggests that "for all the posts carrying pay scale of Rs.550-900/-, promotion should be given on the basis of seniority only". In view of this direction issued by the Tribunal in above referred Reference [IT] No.144 / 1977 against which a writ petition being Special Civil Application No.4382 of 1987 was filed which came to be disposed of by this Court, means, the award in aforesaid Reference No.144 / 1977 has remained as it is without any interference. Therefore, in above of the matter, in my opinion, the tribunal has

committed error in present award while directing the petitioner Corporation to fill up the posts of Maintenance Supervisor from the cadre of Work Mistri when there is no promotion channel from the post of Work Mistri to Maintenance Supervisor. Therefore, this award in question is required to be modified to that extent and accordingly, the Corporation is directed to fill up the posts of Maintenance Supervisor by way of promotion from the feeder cadre having promotion channel on the basis of seniority only.

#. In the result, petition is allowed. Award in question is modified to the effect that now the Corporation is required to fill up the posts of Maintenance Supervisor by way of promotion only on the basis of seniority from the feeder cadre having promotion channel to the post of Maintenance Supervisor.

Rule is made absolute to the extent indicated above. No order as to costs.

Date : 8.9.2004 [H.K.Rathod, J.]

#kailash, ps#